

CITY COUNCIL ~~CONFERENCE~~ MINUTES

January 26, 2010

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The City Council of the City of Norman, Cleveland County, State of Oklahoma, met in a ~~Conference~~ in the Municipal Building Conference Room at 5:30 p.m. on the 26th day of January, 2010, and notice and agenda of the meeting were posted in the Municipal Building at 201 West Gray and the Norman Public Library at 225 North Webster 48 hours prior to the beginning of the meeting.

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PRESENT:

Councilmembers Atkins, Butler, Cubberley, Dillingham, Ezzell, Griffith, Kovach, Quinn, Mayor Rosenthal

ABSENT:

None

~~CHANGE ORDER NO. ONE TO CONTRACT NO. K-0910-26: WITH CONNELLY PAVING COMPANY INCREASING THE CONTRACT AMOUNT BY \$9,089.43 AND EXTENDING THE CONTRACT BY TEN CALENDAR DAYS FOR THE EUFAULA STREET COMMUNITY DEVELOPMENT BLOCK GRANT RECONSTRUCTION (CDBG-R) PROJECT FROM CARTER AVENUE TO REED AVENUE AND FINAL ACCEPTANCE AND PAYMENT OF THE PROJECT.~~

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~~Ms. Linda Price~~, Revitalization Manager, said this change order related to stimulus funding received for the CDBG Program for the reconstruction of Eufaula Street from Carter Avenue to Reed Avenue which included adding drive approaches and curb and gutters. She said the original estimate was for replacement of part of the sidewalk area; however, total replacement for the two-block area was required because the sidewalks were not American with Disabilities Act (ADA) compliant. She said these extra costs added to an overage for asphalt resulted in a final change order of \$9,089.43. She said the project was funded through CDBG-R funding plus bond funds that were to be used to resurface Eufaula Street.

Deleted: DISCUSSION REGARDING RESULTS AND CONCLUSIONS FOR THE WELLHEAD ARSENIC REMOVAL DEMONSTRATION PROJECT.¶  
¶  
Mr. Ken Komiske

Councilmember Kovach asked if there were any other projects coming forward that might have extra costs due to unknown stipulations since Council had recently considered another project with extra costs because of an unknown stipulation from the Oklahoma Department of Transportation.

Mr. Steve Lewis, City Manager, said he was unaware of any material increases but many of the stimulus resurfacing projects in the downtown area required additional ramp improvements.

Mr. Shawn O'Leary, Director of Public Works, said Staff has been in touch with ODOT about the 24th Avenue West Fiber Optics Line Installation Project to determine eligible funding. He said the balance of the stimulus funding is being used for the Robinson Street Grade Separation Project and on a more positive note, there is approximately \$100,000 to \$200,000 of unspent stimulus funds from the Association of Central Oklahoma Governments (ACOG) and ODOT has suggested those funds be used for the Robinson Street Project as well.

Items submitted for the record

1. Memorandum dated January 14, 2010, from Linda R. Price, Revitalization Manager, to Honorable Mayor and Councilmembers
2. Change Order No. One to Contract No. K-0910-26

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Participants in discussion

1. Ms. Linda Price, Revitalization Manager
2. Mr. Steve Lewis, City Manager
3. Mr. Shawn O'Leary, Director of Public Works

QUARTERLY UPDATE ON THE UNIVERSITY NORTH PARK TAX INCREMENT FINANCE DISTRICT.

Mr. Jeff Bryant, City Attorney, said sources of funding for the Tax Increment Finance (TIF) District is 50% from Ad Valorem tax plus sales tax generated from the TIF District. He said 2009 Ad Valorem receipts for the 2008 assessment year totaled \$300,367 and anticipated collections for the 2009 assessment year are \$653,242. He said the bills have been sent out and the first half of the assessment was due December 31, 2009, and the second half will be due March 31, 2010, with the City receiving payment sometime in late April. He said from sales tax generated from the district, 50% is to be used for

public improvements and 10% for economic development. He provided the most recent information about retail sales tax receipts from the TIF District from 2006 to 2009. He explained that the transfer adjustments were retail establishments already located in Norman who had moved their location to the TIF District. That information is listed as follows:

**UNP TIF FUNDING – RETAIL SALES TAX**

Retail Sales Tax	Received by City	Gross Sales	Transfer Adj.	TIF Sales less Transfer Adj.	60% TIF	40% General Fund
Oct. 2006	Dec. 2006	\$ 177,245	\$ 72,846	\$ 104,399	\$ 62,639	\$ 41,760
Nov. 2006- Oct. 2007	Jan. 2007 - Dec. 2007	\$ 1,992,097	\$ 923,024	\$1,069,073	\$ 641,444	\$ 427,629
Nov. 2007 - Oct. 2008	Jan. 2008 - Dec. 2008	\$ 3,173,420	\$ 916,287	\$2,257,133	\$1,354,280	\$ 902,853
Nov. 2008- Oct. 2009	Jan. 2009 - Dec. 2009	\$ 4,330,455	\$1,033,102	\$3,297,353	\$1,978,412	\$1,318,941
Nov. 2009	Jan. 2010	\$ 445,465	\$ 94,991	\$ 350,474	\$ 210,284	\$ 140,190
<b>TOTAL</b>	<b>38 months</b>	<b>\$10,118,716</b>	<b>\$3,040,250</b>	<b>\$7,078,446</b>	<b>\$4,247,080</b>	<b>\$2,831,386</b>

He said sales had increased considerably since Academy Sports had opened for business in November. He listed expenditures to date as \$3,010,922 for traffic/roadway improvements; \$256,755 for the design costs for Legacy Park; \$928,549 for engineering/legal/professional fees; \$411,850 for loan issuance costs; and \$3,644.347 for the Rock Creek Overpass for a total cost of \$8,252,423.

Councilmember Kovach asked what the total encumbrances were to date and Mr. Anthony Francisco, Director of Finance, said there was at least one outstanding encumbrance for the second phase of the Rock Creek Overpass of \$1.3 million.

Mr. Bryant said the bridge is substantially complete for the Rock Creek Overpass Project with Phase II next which would connect the bridge to 24th Avenue on the east and 36th Avenue on the west and provide intersection improvements for 24th Avenue and Rock Creek Road. He said initially the City's share of costs for Phase II was \$6,710,678 and ODOT's share was \$5,553,360; however, additional ODOT funding was received, reducing the cost to \$5,057,712 for the City's share. The TIF funding for the Rock Creek Overpass was \$7.75 million and \$6.75 million was the amount authorized for funding because additional ACOG funds were anticipated. Those funds have been secured leaving a \$2.65 million savings to the City and \$1.65 million in additional Financing Authority to be used for other TIF related projects.

Mr. Bryant said the final plat for University North Park Addition, Section 5, located on the east side of 24th Avenue N.W. will be coming forward to City Council in February. He said there were six lots associated with the plat, with plans for a bank, two restaurants, and three other retail spaces. He said the conference center continues to do well and Norman Economic Development Coalition's ability to purchase land at a reduced price was extended to June, 2010, to allow them to continue to work on their development.

Mr. Bryant highlighted the status of the Legacy Park Project and said it had a construction budget of \$4.35 million plus a contingency of \$750,000 for a total of \$5.1 million. He said the engineer's estimate was \$5,794,877 which included a base bid with thirteen alternates adding amenities suggested by the Development Oversight Committee for TIF District No. 2. He said bids were opened December 10, 2009, and the lowest bid was \$5,678,000 which was good for 90 days. He said Staff met with the low bidder to discuss which alternates could be taken out without changing the quality of the project. He said the list of alternates was presented to the TIF Oversight Committee and the Council Subcommittee. He said Staff recommends Alternates 1-5 and 11 not be included in the bid. Alternates 1-5 deal with a detention pond area behind Kohl's and on September 15, 2010, City Council met in Study Session to discuss the project, and it was a split opinion on whether the City wanted to invest in this improvement. He said the detention pond was included in the bid as an alternate to see how the bids came in. Alternate 11 is a water feature that is really not connected to the lake itself and staff felt the additional cost was not warranted. Other alternates include additional lighting and landscaping.

Mr. Bryant said Staff discussed the options with the TIF Oversight Committee and the Council Subcommittee. The options discussed were rejecting the bids and rebidding or delaying the project; scaling back the project to the base bid and negotiating with the low bidder; or building the park with selected alternates and seeking approval within the funding authorization. He said subtracting the Legacy Park Construction Second Financing of \$4,889,500 from the Legacy Park bid of \$5,678,000 left \$788,500 of additional funding needed. He said there were three options for the additional funding; overages for the Rock Creek Overpass could be used for Legacy Park and if sufficient TIF revenues accumulated over and above the debt service requirements, there would be additional funds to be used and this would require an agreement with the lender. He said the other two options for funding were to either continue using the University of Oklahoma (OU) Foundation as the lender or use private financing. He said Development Agreement No. Five was directly tied to OU Foundation acting as the lender. If OU is not the lender, then there is a provision in the financing document that allows the City to seek a private lender on a parity basis which gives the private lender equal call on those TIF revenues with the first note that the City has already drawn on with OU Foundation for the Rock Creek Overpass Project. He said the first financing established priorities of the Rock Creek Overpass first, Legacy Park second, and road improvements third.

Mr. Bryant said two key issues regarding Development Agreement No. Five had been resolved. The deadline listed in the financing approved in June had been December 31, 2009. He said OU Foundation sent a letter requesting the deadline be extended until March 31, 2010, and the City Manager signed that agreement. He said NEDC also sent a letter to OU Foundation requesting the land purchase option be extended until June, 2010, which had been accepted. He said there are two issues to be resolved, the Lifestyle Center completion date and the penalty tied to that date, which is also tied to the parkland development. He said when the plan was developed, the park was supposed to be developed after the Lifestyle Center in or after 2016. He said before the economy took a downturn, Staff had met with the developer and OU Foundation about moving forward with the park instead of waiting until after 2016. He said Development Agreement No. Three was developed during these negotiations allowing development of the park to be moved up with a stipulation of imposing a \$5.9 million penalty tied to the Lifestyle Center completion. He said if the park was built early and the Lifestyle Center never materialized, then the penalty would be paid by the developer to cover the costs of the park. The developer agreed to the provision and now that the economy has changed, it has become a real concern. Development Agreement No. Three also required the developer to donate the parkland, a little over 6 ½ acres. He said in light of the current economic conditions and Development Agreement No. Five moving forward, the developer has issues with donating the parkland, building the park, maintaining the park, and paying a \$5.9 million penalty if the Lifestyle Center is not built by 2016.

Councilmember Ezzell said at the last Subcommittee meeting, a credit for the parkland donation was discussed. He asked if there had been any discussions with OU Foundation since that time regarding a dollar amount of the credit for the parkland. Mr. Bryant said he had not spoken with OU Foundation but had discussed it with the developer's representative and the figure was consistent with the price per square foot that NEDC was being offered which was \$5 to \$6 per square foot. He said the developer's expectation for the credit was quite a bit higher than that.

Councilmember Kovach said in Development Agreement No. Three, the developer was required to donate the land for the park and asked if Staff was talking about giving them credit for something they already negotiated in an agreement. Mr. Bryant said the credit they would probably get would be just between them and the Internal Revenue Services (IRS) to seek some value for that donation. The other credit they are talking about is an offset to the \$5.9 million penalty by taking the value of the donation and giving some type of credit for it. He said after discussions with the Council Subcommittee, it was felt it would not be very well received. Therefore, the developer suggested the City look at setting performance standards based on square foot retail development from today forward to motivate retail development. If it is based on an average price per square foot for retail, then the higher return for square foot stores would meet the average much faster. He said this would encourage the developer to look for higher end retail stores. He said the developer was trying to look for some way to meet both parties' needs in a way that made sense to both parties.

Councilmember Ezzell asked Mr. Bryant to discuss the ongoing efforts of extending by letter agreement the financing timeline until March 31, 2010 with the bids expiring on March 10. He said the City has the alternative of going the private financing route and asked what was being done in the interim to explore this route. Mr. Bryant said not much has been done so far because part of Development Agreement No. Three requires the donation of land upon which to construct the park and the plat has not been filed nor has the deed been tendered and there has been some discussion about whether they believe that provision is enforceable. He said if you don't have land, you cannot start building.

Councilmember Kovach asked how long it had been since we closed Development Agreement No. Three and why have we waited this long to transfer the deed. Mr. Bryant said the intention was to do it with the plat filing and that was tied with some of the restaurant development around the park.

Councilmember Ezzell asked if the bids expire, what would be involved in rebidding and how much time would be lost if we have to start the process over. Mr. Bryant said he didn't think there would need to be any reworking of the bid, and the only additional time would be if Council wanted to look at some of the alternates and make changes.

Councilmember Ezzell said we can't make any specific demand if we don't have title to the property. Mr. Bryant said we are trying to work cooperatively together to have a mutually beneficial relationship. Councilmember Ezzell asked what the City's timeframe would be on trying to remain cooperative before a demand was made. Mr. Bryant said his goal was to bring it forward to Council by the first meeting in March.

Councilmember Kovach said he was very uncomfortable about all the short trigger events tied to the TIF. He preferred to give them a week more of pleasant discussion and then move to demand because one of the reasons Council wanted to move on this bid letting for Legacy Park was the favorable bid environment. He said it would not last forever and every time we rebid, it could come back higher. He said it is already over budget when everything else is coming in under budget and he is not comfortable with hoping for cooperation because there are no guarantees and the best position for the City is to move more aggressively.

Councilmember Cubberley asked Mr. O'Leary if the project was rebid, did he think the City would get any better bids. Mr. O'Leary said, no, not for a project of this scale. Mr. Bryant noted that the bids were \$120,000 less than the engineer's estimate.

Councilmember Ezzell said the March 10 expiration date has some degree of pressure associated with it assuming that the same group of bidders might not come back for a second bid. He said he would hate to see not getting the same group of bidders back if the project rebid. He said he is all for keeping this friendly, but felt Council needed to decide on a date certain and serve a demand on the parties to agree upon land application. Mr. Bryant said he agreed and we were getting close to that point.

Councilmember Kovach asked what the City could do to pursue private financing to hedge our position in negotiations on Development Agreement No. Five. Mr. Bryant said Staff has spoken with the City's financial consultant and asked him to rerun the numbers to make sure everything is on track which provides the basis to go to a private financier. The report received from Rick Smith, Public Law Finance Group, confirmed we are where we need to be. He said the forecast last June showed no growth, just flat revenue all the way through and it cash flowed with over two times coverage with the debt service. The numbers seen tonight are not "no growth" numbers which will support us moving fairly quickly to a private financier. The legwork has been done, but there no contacts have been made. He said he would start with local banks, possibly a consortium of local banks to invest in a local project. He said he did have a discussion with an OU Foundation representative in December about the private financing option. At the end of the discussion the Foundation was clear about the benefit seen to both parties to stay hooked in this project and very much wanted to be the lender and did not want the City to look for private financing.

Councilmember Kovach asked how much money was in the Economic Development portion of the TIF funding. Mr. Bryant said approximately \$400,000 since July 1st. Councilmember Kovach said he had heard lots of people talk about park systems and economic development and asked whether the City could use the economic development funds for Legacy Park if negotiations break down. Mr. Bryant said he would not recommend that because there is a specific component in the project plan for Legacy Park and a specific component for Economic Development and it may require a project plan amendment.

Councilmember Ezzell felt at the Council Subcommittee Meeting there was a willingness to let the financing tied to Development Agreement No. Five expire and the City would pursue financing for the construction of Legacy Park. He said he was unclear at that time we had not been deeded that land. He said that was the most fundamental issue right now.

Councilmember Cubberley said there was also a willingness and understanding of the current economic environment and to push back deadlines requiring them to perform by 2014, but felt the Committee was not willing to do away with callbacks. He said we are not at that point right now to even begin to make that decision, that's a decision that should be made at the time a deadline is missed or just approaching that deadline. It should be made five years in advance when we don't know what the economic environment is going to be. He said we understand their consternation, at the same time, they knew full well what was going on and we are all taking economic risks. He said the Council Committee wants to work with them but we also want them to perform.

Councilmember Kovach asked if the Committee wanted performance in exchange for pushing back dates.

Councilmember Cubberley said to push back a date, we would expect the financing to get in place and move forward. He said the next agreement also has a roadway component to it and the staging of those improvements. He said negotiations are ongoing about the sequencing of the roadway improvements which include both east and west of I-35 on Robinson and east and west of I-35 on Tecumseh. He said we need this agreement to move forward for all of those roadway improvements as well as financing.

Councilmember Quinn said he agreed with Councilmember Cubberley and Councilmember Ezzell about the deeding of the property. He said it was his understanding that we were trying to get this done as quickly as possible and move forward with it. We now have a date and that puts pressure on us and we need to finish up with what needs to be done and get that accomplished. He has no problem with playing hardball at this point, it is a very important part of our development in the TIF District. If we are not going to get the Lifestyle Center for another five or six years, this has got to be done quickly.

Councilmember Dillingham said she was at the meeting and she felt the Committee made it pretty clear that while we were willing to have some understanding and make some trade offs, that did not include putting ourselves at greater risk and we needed to make sure that we can go ahead and do the park on our own, if necessary. She said it was imperative Council decide when the drop-dead date is going to be and would hate to go past the second or third week in February.

Councilmember Quinn said the Subcommittee was also very optimistic about the OU Foundation providing the financing. He believed that was the Foundation's intent.

Mayor Rosenthal said Council probably needs a conference or study session no later than mid-February with a full briefing on this. She said it is important to talk about the implications of the private financing and there are pluses and minuses to the original existing financing arrangement. She asked if Council wanted to keep the bid alive and proceed with Staff's recommendation regarding the alternates and Council concurred.

Items submitted for the record

1. PowerPoint presentation entitled, "University North Park TIF Update, City Council Conference", dated January 26, 2010

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Participants in discussion

1. Mr. Jeff Bryant, City Attorney
2. Mr. Anthony Francisco, Finance Director
3. Mr. Shawn O'Leary, Director of Public Works

The meeting adjourned at 6:25 p.m.

ATTEST:

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City Clerk

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Mayor